

Appl No.: 09/894,339
Filed: June 28, 2001
Office Action Mailed: September 27, 2004

PATENT

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REMARKS/ARGUMENTS

Claims 1 to 16 are pending in this application. No claims have been cancelled nor added. Therefore, claims 1 to 16 remain pending in the application.

The Rejection of the Claims Under 35 U.S.C. § 102(e) is inappropriate

The Official Action rejected claims 1-16 under 35 U.S.C. § 102(e) as being anticipated by GB 2 355 126 (Lindholm). Applicant respectfully traverses this rejection for reasons expressed below.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102(e) which formed the basis for the rejection:

A person shall be entitled to a patent unless...

(e) the invention was described in - (1) an application for patent, published under **section 122(b)**, by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in **section 351(a)** shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under **Article 21(2)** of such treaty in the English language; or...

The definition of "treaty" under 35 U.S.C. § 351 is

(a) The term "treaty" means the Patent Cooperation Treaty done at Washington, on June 19, 1970.

Furthermore, the following is a quotation of MPEP §706.02(f)(1) Examination Guidelines for Applying References Under 35 U.S.C. § 102

(A) The potential reference must be a U.S. patent, a U.S. application publication (35 U.S.C. 122(b)) or a WIPO publication of an

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international application under PCT Article 21(2) in order to apply the
reference under 35 U.S.C. 102(e).

GB 2 355 126, which is assigned to the assignee of the present application, was filed as an UK application—the GB 2 355 126 cited by Examiner--and as United States Serial Number 09/678,962. There was no application filed under the PCT, thus no WIPO publication. The GB 2 355 126 publication is not a proper reference under 35 U.S.C. § 102. Therefore, Applicants respectfully request the withdrawer of the rejection and reconsideration of the application. A Notice of Allowance is respectfully requested.

No Extensions of Time are required for this Amendment. However, if any extension fee is due by the present Amendment or any other paper submitted during prosecution of the present application, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fees required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 50-0270.

Respectfully submitted,

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Steven A. Shaw
Registration No. 39,368

Customer No. 26343
NOKIA
6000 Connection Drive
MS: 1:4-755
Irving, TX 75039
Tel (972) 894-6173
Fax (972) 894-5619